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SUBJECT: AMBASSADOR CONCLUDES AGREEMENT ON
DE-BAATHIFICATION REFORM

Classified By: Ambassador Ryan C. Crocker for Reasons 1.4 (b) and (d).

¶1. (C) Summary: During his final hours in Baghdad, Ambassador Khalilzad helped to conclude an agreement between President Talabani and Prime Minister Maliki on de-Baathification reform, formally known as the "Accountability and Reconciliation Law" (text below). Talabani and Maliki signed a cover letter affirming their political support for the legislation, which will be submitted to the Council of Representatives (CoR) by PM Maliki. Although post had hoped to have the entire Presidency Council sign off on the draft, VP Adil Abdel Mehdi was hesitant to endorse the draft without approval by SCIRI senior leadership. President Talabani pushed for this agreement in order to bring concrete evidence of progress on the reconciliation agenda to the Arab League Summit in Riyadh March 28-29. The draft law contains some positive developments, such as a firm commitment to complete the work of de-Baathification and pension benefits to most individuals affected by de-Baathification sanctions. It also contains provisions that could be exploited, however, to reduce transparency and politicize the de-Baathification process. Our task is now to work the CoR to reinforce the law's positive aspects, water down or eliminate its negative aspects, and help the law gain broad consensus, particularly among Sunnis. End Summary.

The Legislative Process

¶2. (C) This is only the first step in the legislative process, and the draft will likely undergo several iterations before it is approved by the CoR. After the PM has submitted the draft to the Speaker's office, Speaker Mashadani will send it to the CoR De-Baathification Committee for consideration. Once the committee has debated, amended and agreed upon text, Chairman Falah Al-Shanshal (Sadrists) will forward the draft to the CoR Legal Committee. The Legal Committee will then make its own amendments before the bill is read for the first time on the floor of the CoR. This process is repeated until the third reading, when the draft will be voted upon by the full CoR membership. We expect considerable debate at each step in the process, which will offer opportunities to tighten language, build in greater transparency and due process measures, and establish cross sectarian consensus.

Positive Aspects

¶3. (C) This draft achieves an important US goal: a sunset clause to end the work of the Higher National De-Baathification Commission (HNDBC) and dissolve the body within one year. While we had advocated that de-Baathification procedures to apply to only the highest levels of former Baath Party membership - the Fira level and

above which comprises approximately 1200 individuals - this draft sets the bar at the Shu'aba level. This means that 10,000-12,000 individuals will be permanently prohibited from working in the public sector, although most should be eligible for pension benefits, which will greatly mitigate the effects of de-Baathification. Former military and special forces officers will also receive pension benefits.

¶4. (C) The law also contains a provision to apply its conditions retroactively; all individuals who previously received orders but do not meet the criteria set forth in this law will be automatically eligible for reinstatement. The draft establishes the "Accountability and Reconciliation Commission," tasked with publishing a list of all individuals subject to de-Baathification procedures. This commission will increase transparency in the sanctions process and create accountability, as all decisions and orders will be logged (and presumably, verified for authenticity). The new commission will also focus on developing projects to promote political pluralism, tolerance and equality.

¶5. (C) Another positive development is the transfer of the appeals process to the judiciary. The law creates a "Cassation Panel for Accountability and Reconciliation" to be comprised of judges and will be independent of the HNDBC. This will provide an independent, judicial forum to consider and ensure the fairest possible hearing for those who dispute HNDBC findings.

Negative Aspects

¶6. (C) The law provides for pension benefits for individuals

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at the Shu'aba level and above who are given de-Baathification orders. However, individuals who were previously subject to de-Baathification but no longer meet the criteria are not guaranteed pension benefits. Instead, the law stipulates that these individuals will receive a pension "except if a contradictory order is issued from the Ministry or the Cassation Panel." This provision means that those Ministries that chose to enforce the order against the individual will also have the power to decide whether or not the individual receives a pension.

¶7. (C) Although the appeals process is moved to an independent body, the law allows for the PM to review appeals decisions and lodge objections as he sees fit. This risks political interference in the process and reduces the transparency and accountability of institutions.

¶8. (C) The law allows the Provincial Councils (PCs) to raise or lower the level of Baath Party membership that will be removed from public service in their governorates. This allows governorates to choose to include only Fira and above (approximately 1200 individuals nationwide), or to add all Firqa level members and above (approximately 50,000 individuals nationwide). While this was designed to be a tool to allow the provinces to address their own needs, it fails to consider the political realities on the ground. Nearly all provincial councils are dominated by Shia parties, due to the Sunni boycott of 2005 elections. A Shia heavy PC could choose to lower the level of de-Baathification coverage in Sunni and mixed provinces, further exacerbating and isolating Sunni communities. In addition, there is no time frame associated with this provision, nor is there an indication of how frequently such decisions can be made, which could lead to frequent changes in policy and political intimidation and/or threats.

¶9. (C) The "Accountability and Reconciliation Commission" created under this law is tasked with largely benign functions that could legitimately advance reconciliation efforts. However, there is one function, "to track down

financial assets," that could be exploited to harass and threaten individuals. Granting this commission an investigative role independent of the judiciary creates the risk that the new commission, like its predecessor, will become a tool of political intimidation and will lose credibility as an institution of reconciliation. This risk is compounded by the fact that the commission is permanent.

¶10. (C) The draft law creates additional bureaucracy which, if unchanged during CoR debate, threatens to undermine the positive developments contained in the reform package. For example, the process of issuing a de-Baathification order is greatly complicated by additional layers of "review" in the Cassation Panel and the Special Committee. The appeals process originates in the Cassation Panel, but the CoR can also recommend individual case reviews and the PM can object to Cassation Panel decisions. It is crucial to have streamlined procedures for issuing decisions and deciding appeals in order for the process to maintain public credibility and integrity.

¶11. (C) Perhaps the biggest concern is the "Special Committee" that is formed under this law. This committee, made up of political and security experts rather than technocrats, is given a broad, ill-defined mandate to "protect State institutions and the political system against the exploitation of the national reconciliation process and the spirit of tolerance by elements in the dissolved Baath... or any other group who seek to return to sensitive positions for the purpose of working against the Constitution." Although the process of de-Baathification is supposed to end within one year, this committee appears to have the authority to continue to persecute and attack former Baathists, and potentially the political opposition, for an indefinite period of time. The draft does not specify what the committee can actually do to these individuals.

Conclusions and Way Forward

¶12. (C) While this draft could provide a good foundation for reconciliation, early reactions suggest that what could be too little gain for the Sunnis may already go too far for the Shia. Grand Ayatollah Sistani's office has publicly opposed the draft, and prominent cleric Sheikh Abdul Mahdi Al-Karbali cautioned in his Friday sermon that the legislation could allow criminals and former security officers to return to positions of power. The Higher National Debaathification Commission, considered the subject matter expert by most Shia, issued a statement condemning the draft law as unconstitutional and warning that it could encourage further

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violence and bloodshed.

¶13. (C) Our task is now to reinforce the draft's positive aspects, water down or eliminate negative aspects, and help the final law gain broad consensus. We will engage VP Hashimi immediately, drawing him into the consultative process and supporting his party's efforts to amend key provisions in order to gain broader Sunni support. We will also reach out to SCIRI leader Abdul Aziz Al-Hakim and other key Shia politicians, encouraging them to show leadership in the face of resistance in order to pass meaningful reform. The legislative process, as well as the upcoming UN/International Center for Transitional Justice conference, will provide important opportunities to address our concerns and build consensus, and post will continue to work with political leaders to ensure that de-Baathification reform fosters real reconciliation.

BEGIN TEXT:

Draft of Accountability and Reconciliation Law

The people of Iraq, rose up and overcame all manifestations of fear, capitulation and division; It surmounted trials as one nation capable of building what was destroyed by its enemies. This people went out in an unprecedented fashion to fill the ballot boxes with an unyielding and free will to elect its leaders, to write its permanent Constitution and to recover its long lost freedom.

This people, free and sincere, committed itself to the principles of Democracy and the Rule of Law, and came together once again to turn a new page for a promising Iraqi future, free of terrorism, corruption and destructiveness, a future that is based on principles of unity and National Reconciliation.

In order for this people to prove its genuineness and its adherence to the values which are based on tolerance, love and peaceful coexistence, while deeply realizing the magnitude of the crimes committed against all Iraqis at the hand of the figures of the former regime and the leaderships of the dissolved Baath Party, who were brought to justice through the High Criminal Court; and because we have a Constitution that protects the future generations and prevents the return of the Baath party or any other entity that adopts ideologies based on the use of violence, terrorism, totalitarianism, despotism, sectarianism, and racism to rule the nation and the people.

Because we realize, today more than ever, the extent of what Iraqis , all Iraqis, have suffered because of the actions and practices of the former regime and since this realization is an important part of the process of moving Democracy forward and one of the basic elements for building real National Reconciliation; and in order to turn the hateful page of the past, not by forgetting or pretending to forget the great sacrifices of our people and the harsh sufferings they endured during that dark period; all this requires that this people be given back what would help it to forget the calamities of obsoleteness, backwardness and deprivation and to start a period of recovery, healing, prosperity, progress and wellbeing under a Law based on principles of reconciliation and accountability.

For this, we present "The Law of Accountability and Reconciliation" in order to construct an Iraq that is open to all Iraqis who are determined to build a free and democratic Iraq rid from sectarianism, racism, tyranny, discrimination, exclusion and marginalization. This is to happen at the same time as bringing to justice those who perpetrated crimes against the people of Iraq and exacted all types of repression and humiliations against it. This shall ensure that they receive through the Judiciary their just punishment. We hope that this law will open wide opportunities before all to work to build our country and pave the way before the coming generations for a bright and shining future.

First: Accountability:

¶1. The Debaathification decisions shall cover every one who was at a rank of Section member and above in the dissolved Baath Party. Pension rights shall be arranged for those covered by the decisions of Debaathification in accordance with the applicable pension laws.

¶2. The military from the Army and the Police who were Baathists at the time of the fall of the regime, having reached the age of retirement and were at the rank of Colonel and above shall be referred to retirement.

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¶3. All positions, military grades, decorations and titles that are enjoyed by the Section and Branch members and the regional and national bureaus shall be cancelled.

¶ 4. Members of Sections, Branches, regional and national bureaus shall be prohibited from participating in government tenders (category 1 and 2) for the next ten years.

¶ 5. Pension salary or grant shall not be paid to any person who was a member of the "Dissolved Baath" at the time of the fall and submits a request for political asylum abroad.

¶ 6. Any person who benefited from this Law or any former member of the dissolved Baath or others, and subsequently was proven to have submitted false information or returned to one of the banned entities or assisted or promoted any one of them shall have all exceptions and rights waived and shall be dismissed from the service and shall be charged of a crime involving moral turpitude. He shall be judicially prosecuted to return what he gained of rights and assets.

¶ 7. A "Special Committee" shall be formed made up of seven members with experience in politics and security that come from different tendencies and are nominated in consultation between the Presidency Council and the Prime Minister, and approved by the Council of Representatives. Its purpose shall be to turn the page on the past and to protect the State institutions and the political system in the country against the exploitation of the national reconciliation process and the spirit of tolerance by those elements in the Dissolved Baath or the special agencies of the former Regime or any other group who seek to return to sensitive positions for the purpose of working against the Constitution.

¶ 8. The "Special Committee" shall take its decisions by a majority of 5 (or 4) votes for immediate implementation. The committee shall work under the supervision of the Prime Minister and it shall inform him of its decisions as well as considering on his behalf all the decisions issued by the Debaathification Commission.

¶ 9. A Commission called "Cassation Panel for Accountability and Reconciliation" shall be formed and shall be referred to in this Law as the Cassation Panel to be made up of seven Judges of first grade appointed by the Higher Juridical Council, approved by the Council of Ministers and ratified by the Council of Representatives. They shall be headed by the senior Judge among them; its decisions shall be by a majority of four votes.

¶ 10. "The Cassation Panel" shall consider all the decisions of the De-Baathification Commission or the decisions of the ministerial committee as well as all grievances or to examine the cases filed regarding the De-Baathification Commission procedures.

¶ 11. In the De-Baathification or the exemption cases, the person included, his office, the Parliament member or the governorate council's member shall have the right to submit a request of appeal within the specified period. Unless the Prime Minister objects within one month after notification the decision of the Supreme Cassation Panel shall be final.

¶ 12. The Cassation Panel shall reach its decision within (60) days from the date of receiving the request. In any case, the employee shall continue in his post after he is granted paid leave until the issuing of the cassation decision, except for the decisions issued by the Ministerial Committee.

¶ 13. The Council of Representatives shall have the right to issue recommendations to be approved in a general session calling on the commissions and the committees responsible for the application of this law to review their decisions.

¶ 14. "The De-Baathification Commission" shall complete its functions within a period not to exceed one year after the date of entry into force of this Law.

¶15. Every Iraqi citizen shall have the right to file a lawsuit against any member of the "Dissolved Baath" or in the security agencies of the former regime before the Criminal Courts concerning crimes of private or public right within three months from the date of the issuance of this law before the Cassation Panel for Reconciliation and Accountability. The Commission shall set up branches in all Iraqi governorates to receive lawsuits within the abovementioned limited period. A period not to exceed three months as of the date of receiving the claims shall be set

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for deciding them in a final and complete manner. It is not permitted to appeal these lawsuits before any other legal authority.

Second- Reconciliation:

¶1. Governorates, Councils shall be allowed to make a decision related to the departments of their governorate to reduce or raise the level of Accountability or Debaathification procedures by one grade according to the conditions that they will assess within their borders for the application of the principles of accountability and reconciliation.

¶2. Those individuals who received Debaathification orders in the past in accordance with the Coalition Provisional Authority (CPA) order No.1 and the relevant decisions, and those who are entitled under this law to be reappointed to service. If there is no suitable position in the public sector for an individual or if he has reached the retirement age as of the date of entry into force of this law, then that individual shall receive a pension without further formalities, except if a contradictory order is issued from the Ministry or the Cassation Panel.

¶3. There shall be established in accordance with this law a neutral and independent commission, called "Accountability and Reconciliation Commission", its function is to serve the historical remembrance of the atrocities and suffering during the "the Dissolved Baath" regime in order to protect the coming generations from falling again into the clutches of tyranny and persecution and to disseminate the spirit of coexistence, reconciliation, civic peace, justice, equality and citizenship among Iraqis. It shall work particularly to achieve the following:

¶A. To determine who are the individuals included in the De-Baathification procedures within a period not to exceed one year and to publish a list in this regard in accordance with the De-Baathification procedures stipulated in this Law. The list shall contain names of all individuals subject to these procedures indicating the rank of each and the date of issuing the relevant De-Baathification order. This list shall be kept in the Dissolved Baath Party archives.

¶B. All files of the Dissolved Baath Party shall be transferred to NGOs and/or the appropriate governmental organizations in order to be preserved until a permanent Iraqi archive is established pursuant to the law. The representative of the organization, which will preserve the files, shall have the right to look into and make an inventory of these files as of the date of this Law in preparation for transferring and providing safekeeping for them.

¶C. To contribute in developing social and cultural programs that reaffirm political pluralism, tolerance and equality, and at the same time condemns the crimes and atrocities committed by the former regime as well as the culture of the one-party system, marginalization and exclusion.

¶D. To endorse the activities and decisions of the "Accountability and Reconciliation Commission" in addition

to its work in eradicating Baathification from the thinking of the individual and society, to prevent the Baath culture, to track down financial assets, to review the educational programs which glorify the role of the Baath and its figures and to preserve the bad heritage of the former regime so as to bear witness of its squandering the people's assets, of its crimes and its personality cult.

¶4. The De-Baathification Commission shall be dissolved after ending its work within a period not to exceed one year as of the date of entry into force of this law.

¶5. An interim committee shall be formed in the Council of Representatives in accordance with Article (135 / Sixth) to monitor the implementation procedures of the Supreme Commission for Debaathification and State agencies in order to ensure justice, objectivity and transparency and to consider their consistency with the laws. The decisions of the committee shall be subject to the approval of the Council of Representatives.

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